APPEAL NO. 022926
FILED DECEMBER 23, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on October 22, 2002, and the record closed on October 29, 2002 (to allow the parties to submit written closing arguments. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that the claimant had disability from the compensable injury from April 30, 2002, and continuing through the CCH. The respondent (carrier) appeals, contending that the hearing officer erred because he did not consider the carrier's written closing statement that was submitted prior to the record closing and that the hearing officer's determinations are against the great weight and preponderance of the evidence. The claimant responds, urging affirmance.

DECISION

We affirm the hearing officer's decision.

Although the carrier may be correct in that the hearing officer did not review its written closing statement, any error by the hearing officer is harmless error. Closing statements are not evidence and the hearing officer's determinations must be based on review of the evidence before him; consequently, consideration of arguments cannot substitute for weighing the evidence. There is nothing in the record before us to suggest that the hearing officer did not review all the evidence before him in making his determinations.

There was conflicting evidence presented in this case. Essentially, the carrier quarrels with the manner in which the hearing officer gave weight and credibility to the evidence. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

The record in this case presented conflicting evidence for the hearing officer to resolve. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the

evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the decision and order.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Michael B. McShane
Appeals Panel
Manager/Judge

_____
Edward Vilano
Appeals Judge